

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No: 3:13-CV-1196 (GLS/DEP)
)	
NBT BANK,)	
)	
Defendant.)	

COMPLAINT TO ENFORCE INTERNAL REVENUE SERVICE LEVY

The United States of America, pursuant to the provisions of 26 U.S.C. § 7401, with the authorization of the Secretary of the Treasury and at the direction of the Attorney General of the United States, brings this action pursuant to 26 U.S.C. § 6332(d), to enforce an Internal Revenue Service (“IRS”) levy served on defendant NBT Bank due to its failure to honor the proper and lawful levy by failing to surrender property to the United States.

JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402(a).
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) .

PARTIES

3. Plaintiff is the United States of America.
4. Defendant, NBT Bank, is a financial services holding company with its principal place of business at 52 South Broad Street, Norwich, NY 13815.

CLAIM FOR RELIEF

5. The allegations set forth in paragraphs 1 through 4 are realleged and incorporated by reference.
6. A delegate of the Secretary of the Treasury made assessments against James L. Omahen for federal income taxes, penalties, interest, and fees and collection costs as follows:

Year	Assessment Date	Unpaid Assessed Amount	Unpaid Assessed Amount Including Statutory Additions as of 8/4/2012
2004	1/5/2009, 6/28/2010, 3/14/2011 & 4/11/2011	\$2,079.44	\$2,200.26
2005	1/5/2009 & 6/28/2010	\$7,841.18	\$8,120.40
2006	6/1/2009 & 6/28/2010	\$24,218.62	\$25,081.05
2007	7/26/2010	\$9,774.49	\$10,151.24
2008	11/9/2009 & 6/28/2010	\$846.69	\$922.93
2009	7/25/2011	\$3,289.79	\$3,567.03
TOTAL		\$48,050.21	\$50,042.91

7. On or about February 22, 2011, the IRS filed with the County Clerk of Chenango County, New York, a Notice of Federal Tax Lien (“NFTL”) against James L. Omahen, for the 2004 through 2008 tax years in connection with the unpaid federal income taxes set forth in paragraph 6 of this complaint.

8. On or about March 21, 2011, the IRS filed with the County Clerk of Delaware County, New York, a NFTL against James L. Omahen, for the 2004 through 2008 tax years in connection with the unpaid federal income taxes set forth in paragraph 6 of this complaint.
9. Despite the IRS sending taxpayer James L. Omahen a Third Party Notification letter and a Final Notice letter of the IRS intent to levy, as of August 4, 2012, taxpayer James L. Omahen remained indebted to the United States in the amount of \$50,042.91. Interest and penalties continue to accrue on the unpaid balance due until the liabilities are paid in full.

LEVY

10. On or about July 5, 2012, the IRS mailed defendant NBT Bank a Notice of Levy, Form 668-A, in connection with the unpaid federal income taxes of James L. Omahen set forth in paragraph 6 of this complaint. A copy of the Notice of Levy is attached as Exhibit 1.
11. The Notice of Levy identifies the taxpayer as James L. Omahen.
12. The Notice of Levy states: “This levy requires you to turn over to us this person’s property and rights to property (*such as money, credits, and bank deposits*) that you have or which you are already obligated to pay this person.” This Notice of Levy further states that: [NBT Bank must] “Make a reasonable effort to identify all property and rights to property belonging to this person.” It further states that: “At a minimum, search your records using the taxpayer’s name, address, and identifying numbers(s) shown on this form.”

13. On July 6, 2012, a representative of NBT Bank responded to the Notice of Levy indicating “No Funds/Court Order Account.”
14. On August 3, 2012, the IRS served a Final Demand for Payment to NBT Bank via certified mail, referencing the first notice of levy that had been served on NBT Bank on or about July 5, 2012. A copy of the Final Demand for Payment is attached at Exhibit 2.
15. On August 6, 2012, a representative of NBT Bank responded to the Final Demand for Payment indicating “No Funds/No Account/Per Court Order Account Closed. At the time of service of the Notice of Levy upon NBT Bank on July 5, 2012, James L. Omahen owed approximately \$50,042.91 with respect to unpaid federal income tax liabilities, penalties and interest for the 2004 through 2009 tax years, plus statutory additions which continued to accrue from that date.
16. On August 3, 2012, the IRS served a Summons on defendant NBT Bank via certified mail requesting the production of information and documents regarding *inter alia* the type of account, account number, account statements from April 1, 2012, through July 31, 2012, the current account balance and copies of the legal order on accounts concerning the taxpayer James L. Omahen. A copy of the Summons is attached as Exhibit 3.
17. NBT Bank responded to the Summons by providing various documents including a bank statement that indicated that the balance of account XXXXXX0092 titled in the name of James L. Omahen or Sueko Omahen was \$45,511.19 at the date of the levy described in paragraph 10. NBT Bank also provided copies of two

checks drawn from this account on July 11, 2012, each in the amount of \$22,764.11, payable to the taxpayer James L. Omahen and his former spouse, Sueko Dart.

18. NBT Bank failed and refused to surrender the balance of \$45,511.19, as of the date of the July 5, 2012 levy, in account XXXXXX0092 titled in the name of James L. Omahen or Sueko Omahen to the United States in violation of 26 U.S.C. § 6332.
19. NBT Bank is indebted to the United States in a total sum equal to the amount of the property required to be surrendered by the levy to the United States, plus interest pursuant to 26 U.S.C. §§ 6332(d)(1) and 6621, although the government only seeks to collect from NBT Bank the current unpaid amount of Mr. Omahen's federal income tax liabilities, penalties and interest for the 2004 through 2009 tax years, which as of May 20, 2013, totals \$19,480.38, plus statutory additions which continued to accrue from that date.

WHEREFORE, the United States of America hereby prays that this Court:

- A. Adjudge NBT Bank to be indebted to the United States in the amount of \$19,480.38, as of May 20, 2013, plus statutory additions which continue to accrue from that date, pursuant to 26 U.S.C. §§ 6332(d)(1) and 6621;
- B. Grant the United States its costs in prosecuting this action; and

- C. Grant such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General
U.S. Department of Justice Tax Division

/s/Lisa L. Bellamy
LISA L. BELLAMY (514173)
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55, Ben Franklin Station
Washington, D.C. 20044-0055
Tel: (202) 307-6416
Fax: (202) 514-5238
Lisa.L.Bellamy@usdoj.gov